IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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DOBBIE WILSON,

Civil No:

Plaintiff,

COMPLAINT FOR VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

-against-

DEMAND FOR JURY TRIAL

COMENITY BANK

Defendant.

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Plaintiff DOBBIE WILSON, ("Plaintiff"), by and through his attorneys, Moynihan Law, P.C., brings this Complaint against the Defendant COMENITY BANK (hereinafter referred to as "Defendant"), respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) under Title 47 of the United States Code, §227 commonly known as the Telephone Consumer Protection Act (TCPA).

2. The TCPA prohibits auto-dialed calls which are placed to a called party's cellular phone without that party's consent. Senator Hollings, the TCPA's sponsor, described these auto-dialed calls as "the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone out of the wall."

Osorio v. State Farm Bank, F.S.B., 746 F.3d 1242, 1255-56 (11th Cir. 2014), *citing*, 137 Cong. Rec. 30,821 (1991).

3. Even if prior consent was given, a consumer has a right to revoke that consent. *See*, *Gager v. Dell Financial Services, LLC*, 727 F.3d 265 (3rd Cir. 2013).

4. In 1991, Congress responded to these abuses by passing the TCPA. In enacting the TCPA, Congress made findings that telemarketing had become "pervasive due to the increased use of cost-effective telemarketing techniques." *See*, PL 102-243, § 2(1). "Residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy." Id. § 2(10). The TCPA's findings also reflect Congress's conclusion that "[i]individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices." Id. § 2(9). Consumers who receive these unauthorized calls thus have suffered a distinct privacy-related interest, namely the "intentional intru[sion] . . . upon their solitude or seclusion of their private affairs or concerns." *Intrusion Upon Seclusion*, Restatement (Second) of Torts § 652B (1977).

PARTIES

5. Plaintiff is a natural person who resides in Pittsburgh, Pennsylvania.

6. Defendant is a national bank with its headquarters at 3100 Easton Square Place, Columbus, Ohio 43219.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 USC §1331.
8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

ALLEGATIONS OF FACTS

9. Plaintiff repeats, reiterates and incorporates the allegations contained in the preceding paragraphs with the same force and effect as if the same were set forth at length herein.
10. On information and belief, on a date better known to the Defendant, Defendant began its campaign of communicating with Plaintiff via the use of an automated telephone dialing system and prerecorded messages throughout the past four years by calling Plaintiffs cellular telephone phone number of (412) xxx-8547.
11. Defendant's use of an automated telephone dialing system was clearly indicated by the use of prerecorded messages and automated prompts when Plaintiff would answer the phone, the placement of up to five calls per day, and no human being on the phone line when the Plaintiff would answer the phone.
12. Plaintiff is the customary and sole user of the cellular phone number (412) xxx-8547.
13. For some time, Defendant has been calling Plaintiff's cellular telephone asking for someone named Jada.
14. The Defendant called from numerous phone numbers, including but not limited to 866-224-3436, 913-312-5192, 614-754-4136, and 413-312-5191.
15. The calls were made with such heavy volume, that Plaintiff was receiving approximately five calls and prerecorded messages a day.

16. Plaintiff on multiple occasions told the Defendant that they had the wrong number and to stop calling.

17. On one such occasion, on October of 2016, Plaintiff called the Defendant's phone number of 866-224-3436, and notified the representative that they had the wrong number and to stop calling.

18. Again, in or around November of 2016, Plaintiff answered one of the many harassing and annoying calls he was receiving from Defendant and told the representative again that they had the wrong number and to stop calling.

19. Despite Plaintiff's repeated requests, Defendant continued to call Plaintiff's cellular telephone with an automated telephone dialing system and prerecorded voice messages.

20. In addition, Defendant began a campaign of texting Plaintiff's cellular telephone.

21. The text messages would read:

> "JADA, call Comenity Bank RE: Victoria's Secret @ 866-224-3436 or bit.ly/27rzXw5. To stop texts, reply STOP For help, HELP."

22. Plaintiff responded to one of the texts stating:

> "Man quit texting my phone new number."

23. By placing auto-dialed calls and texts to the Plaintiff's cell phone, the Defendant violated 47 USC §227(b)(A)(iii) which prohibits using any automated telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a cellular telephone service.

24. Plaintiff suffered actual damages because the Defendant's calls to his cell phone deprived him of the use of his cellular phone during the times that the Defendant

was calling, depleted the battery life of the cellular telephone, and by invading on the Plaintiffs' right to privacy and seclusion (the very harm that Congress sought to prevent).

25. The Defendant's repeated calls and texts further caused the Plaintiff to be harassed, stressed, frustrated and annoyed. The Defendant's repeated calls further interrupted the Plaintiffs day and wasted the Plaintiffs time spent answering and otherwise addressing these repeated phone calls text messages.

26. Defendant's communication efforts attempted and/or directed towards the Plaintiffs violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).

27. As a result of Defendant's violations of the TCPA, Plaintiff has been damaged and is entitled to damages in accordance with the TCPA.

FIRST CAUSE OF ACTION

28. Plaintiff repeats and incorporates by reference all of the above paragraphs of the Complaint as though fully stated herein.

29. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b) *et seq.*

30. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq*. Plaintiff is entitled to an award of $500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)3.

31. As a result of Defendant's violations of 47 U.S.C. § 227(b) *et seq.* Plaintiff is entitled to an award of treble damages $1,500.00 for each and every knowing

and/or willful violation of the TCPA pursuant to 47 U.S.C. § 227(b)3.

DEMAND FOR TRIAL BY JURY

32. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant as follows:

A. For mandatory statutory damages of $500 each provided and pursuant to 47 USC §227(c)(2)(G)(3)(B), for all texts placed to the Plaintiff's cellular phone;

B. Plaintiff requests enhanced trebled damages of $1,500 to be awarded to the Plaintiff per call, in accordance with the TCPA, for the Defendant's willful violations of the TCPA;

C. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: February 3, 2017

Respectfully submitted,

MOYNIHAN LAW, P.C.

By: /s/ Mark G. Moynihan___________

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